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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,870	01/23/2004	Bruce A. Rogers	08859-0010	8527

7590

05/19/2005

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260 South Broad Street  
Philadelphia, PA 19102

EXAMINER
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DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/763,870

Applicant(s)

ROGERS, BRUCE A.

Examiner

Robyn Doan

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee (5803096).

With regard to claim 1, Lee discloses a hair holding device (fig. 7) comprising a first body member (6) and a second body member (7) comprising hair gripping portions (1, 2 fig. 3), a hinge means (5) pivotally connecting the first and second body members and elastomeric means (8) in contact with the first and second body members for biasing the first and second body members in a closed position. In regard to claim 12, the elastomeric means being removably connected to the first and second members by means (61, 71) at the first and second ends for connecting the elastomeric means to the body members. In regard to claims 13-14, the hair holding device further comprising a torsion spring (4) having first end in contact with the first body member and a second end in contact with the second body member. In regard to claims 15-16, the first and second body members also comprising handle portions (11, 21 fig. 3) and wherein the first end of the torsion spring being in contact with the handle portions of the first and

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second body members. In regard to claims 17-19, the first and second body members also having a fulcrum means which includes at least one connecting lug (12, 22) extending from a hinge axis of the hinge means toward the elastomeric means. In regard to claim 20, the above apparatus is capable to perform the substantially steps.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 6-7 and 9-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Silva (6453911).

With regard to claims 1, 6-7 and 9-10, Silva discloses a hair holding device (figs. 1 and 5) comprising a first body member (15a) and a second body member (16a) comprising hair gripping portions (15b, 16b), a hinge means (20) pivotally connecting the first and second body members and elastomeric means (12) in contact with the first and second body members for conforming to gathered strands of user's hair. The elastomeric means having at least one continuous elastomeric band (1, fig. 5) which comprises means for permanently connecting the band to first and second body members. The elastomeric band being a looped configuration (fig. 5), a laced configuration (fig. 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee.

With regard to claims 2-5 and 11, Lee discloses a hair holding device comprising all the claimed limitations in claim 1 as discussed above except for the elastomeric means being one finite length elastomeric strand and means for permanently connecting the strand to the body members. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the elastomeric means being one finite length elastomeric strand, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. And it would also have been obvious to one having an ordinary skill in the art at the time the invention was made to form means for permanently connecting the strand to the body members, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

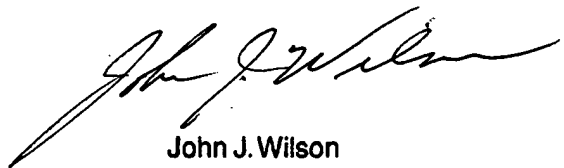
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
May 16, 2005



John J. Wilson  
Primary Examiner